

CCIVPEYS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

10 CR 918 (RPP)

5 NATAN PEYSAKOV,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 18, 2012
10:24 a.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 SARAH Y. LAI

Assistant United States Attorney

18 ALBERT Y. DAYAN

19 Attorney for Defendant

20 ALSO PRESENT: REBECCA VASSILAKOS, FBI

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1 (In open court)

2 THE DEPUTY CLERK: United States v. Nathan Peysakov.

3 Is the government ready in this matter?

4 MS. LAI: Yes. Sarah Lai. With me is Special Agent
5 Rebecca Vassilakos from the FBI.

6 MS. VASSILAKOS: Good morning, your Honor.

7 THE DEPUTY CLERK: And defendant ready?

8 MR. DAYAN: Yes, defense is ready. Albert Dayan for
9 defense.

10 THE COURT: Good morning, Mr. Dayan. And good
11 morning, Mr. Peysakov.

12 I have the sentencing minutes before me, and I
13 corrected those minutes, but they evidently were not sent back
14 down to the court reporter. And they are so full of errors
15 that I don't think I can sentence this defendant. It's
16 absolutely incomprehensible.

17 MS. LAI: Which date is the Court looking at, because
18 he came back and we allocuted before the Court.

19 THE COURT: This is March 8. I agree with you I
20 brought him back here some time later, but I haven't been
21 furnished with the final minutes.

22 MS. LAI: I have a July 5th, 2012.

23 THE COURT: I don't have those before me.

24 MS. LAI: I'm happy to share my copy with the Court or
25 we can adjourn it.

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1 THE COURT: All right.

2 (Pause)

3 THE COURT: These minutes seem to be somewhat
4 satisfactory.

5 I have my copy of the minutes. And I felt the
6 allocution was satisfactory to plead to the crime. It's not
7 entirely clear to me what the extent of the defendant's
8 participation was. He talks about runners, and I take it that
9 runners were some class of people whom he for some reason knew.
10 But that's not articulated as to actually how they fit into the
11 picture.

12 MS. LAI: Your Honor, my understanding is that because
13 the defendant worked at more than one clinic, not the lead
14 defendant's clinic, not Total Body Diagnostics, he worked at
15 these other clinics. And through his work in the various
16 clinics, he got to know runners who brought patients to those
17 other clinics.

18 THE COURT: Why would you need a runner to operate a
19 clinic?

20 MS. LAI: Well, they steer auto accident victims to
21 particular clinics in exchange for a payment per patient. So
22 that's basically how it worked. They had people on the street.
23 I'm not saying that they worked for him specifically as his
24 subordinates, but these runners know which clinics accept auto
25 accident victims, and which clinics are willing to pay in order

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1 to get referrals for those patients. And so through his work
2 at the various clinics, he got to know these runners. And
3 because he knew the lead defendant, he also referred patients
4 to Aron Chervin's clinic so that they can receive these --

5 THE COURT: You mean the clinics in the city use
6 runners to retract patients?

7 MS. LAI: Not if they operate legitimately, because it
8 is, in fact, illegal to pay for patient referrals. But in this
9 case, obviously these runners were getting paid, and that's
10 part of the overall scheme, is that they used runners to refer
11 patients to them. These runners, they have contacts at
12 hospitals, they have contacts at ambulance services, so they
13 know when there's an accident victim.

14 THE COURT: They are called ambulance chasers.

15 MS. LAI: I was trying to avoid using that term,
16 because it usually applies to lawyers. But, yes, that's
17 essentially what they are.

18 THE COURT: They work for lawyers.

19 MS. LAI: They'll make referrals to lawyers, to
20 clinics, to various medical services like x-ray laboratories.

21 THE COURT: But in this case, all he knew was they
22 worked for the clinics.

23 MS. LAI: Yes.

24 THE COURT: That he worked for them.

25 MS. LAI: He worked for the clinics, right, and the

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1 runners worked --

2 THE COURT: Is that --

3 MR. DAYAN: If you don't mind, Judge, in my
4 experience --

5 THE COURT: Not your experience. In this case.

6 MR. DAYAN: This case. Right.

7 In my experience with this case, Judge, different
8 participants with different involvements. You have runners,
9 you have doctors, obviously, and you have patients. This
10 defendant -- and it was never alleged that Mr. Peysakov was
11 ever a runner, nor was he ever associated with runners.

12 As I had outlined in my papers, he did know a doctor.
13 And when Chervin called him and asked him for a referral,
14 obviously for a fee, the defendant made such a referral. But
15 he was not that type of a runner that basically hustles and
16 tries to get cases from the street, nor does he chase
17 ambulances.

18 THE COURT: You're disagreeing with Ms. Lai. You're
19 disagreeing by what you say with Ms. Lai.

20 MR. DAYAN: I'm not sure if she --

21 THE COURT: You say he didn't associate with runners.
22 But you have to associate if he accepted referrals from
23 runners.

24 MR. DAYAN: I'm not sure if Chervin was a runner in
25 this case, Judge.

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1 THE COURT: What?

2 MR. DAYAN: I'm not sure if Chervin was a runner in
3 this case. Is Ms. Lai describing him as a runner?

4 THE COURT: No. What she's saying is that he accepted
5 business from further clinics from runners, that's all.

6 You limited it to merely the referral of a doctor.
7 You don't, in your response, say anything about the association
8 with the runners or what role the runners played in this with
9 him. I want to know whether there's a dispute of fact here or
10 not.

11 MR. DAYAN: If I may confer with Ms. Lai. Can I do
12 that briefly, Judge?

13 THE COURT: Yes, you may.

14 (Pause)

15 MR. DAYAN: Judge, if there's any differences between
16 what I said and Ms. Lai, I would agree with Ms. Lai's
17 representation.

18 THE COURT: I want to know from the defendant. I want
19 to be sure he understands.

20 THE DEFENDANT: Okay. Yeah, I understand.

21 THE COURT: I don't know whether you understand.
22 You'll have to tell me what you understood.

23 THE DEFENDANT: I agree with Ms. Lai.

24 THE COURT: What?

25 THE DEFENDANT: I agree with what she say.

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1 THE COURT: No, no. That's not good. I don't know
2 what you're agreeing with. You'll have to tell me.

3 (Pause)

4 THE COURT: Before you answer me, this has to be not
5 what Mr. Dayan told you, not what Ms. Lai told you, not what
6 the agent told you, but what you remember of your own
7 knowledge, what you know, that you know happened is true.

8 Now, it's got to be that. It's not what Mr. Dayan
9 tells you, because I'm not sure Mr. Dayan understands the full
10 extent of this.

11 THE DEFENDANT: The runners told me, and I know I
12 can't refer them to any clinics.

13 MS. LAI: The runners called me and I knew I can --

14 MR. DAYAN: You're not clear.

15 THE DEFENDANT: If the runners call me, and I knew
16 they have a patient, and they can refer it to the doctors, I
17 did refer it to the doctors.

18 THE COURT: To what doctors? To Mr. Chervin or to
19 your doctors and your clinic?

20 THE DEFENDANT: It's not my clinic. I work as a
21 manager. But doctor who worked in the clinic, Dr. Rodriguez.

22 MR. DAYAN: Dr. Rodriguez he said. Dr. Gibbs and Dr.
23 Rodriguez.

24 MS. LAI: So Dr. Gibbs and Dr. Rodriguez, your
25 Honor -- Dr. Gibbs, as the Court knows, worked for Total Body

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1 Diagnostics. Dr. Rodriguez also did. He was one of the names
2 that came up when the expert was testifying about the various
3 medical reports that he reviewed as part of this expert
4 examination.

5 THE COURT: And who did Dr. Rodriguez work for,
6 Mr. Peysakov? You don't have to talk to Mr. Dayan to answer
7 that question.

8 MR. DAYAN: The name of this --

9 THE COURT: No, you don't have to talk to him. Answer
10 the question.

11 THE DEFENDANT: Dr. Rodriguez worked for his clinic,
12 his clinic DXR, Ocean Medical, and Dr. Gibbs worked for Total
13 Body Diagnostic.

14 THE COURT: Total Body.

15 THE DEFENDANT: Total Body, yes.

16 MR. DAYAN: Judge, I'm sorry if he seems a little
17 nervous, because we didn't really prepare for this type of
18 discussion.

19 THE COURT: I know, but that's because we have these
20 constant interruptions in the previous proceeding for you to
21 talk to him, and there's a problem because that creates a
22 problem.

23 And did you refer Dr. Rodriguez to Mr. Chervin?

24 THE DEFENDANT: No, no, I didn't refer Dr. Rodriguez
25 to Mr. Chervin.

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1 THE COURT: I didn't understand it.

2 THE DEFENDANT: No, I did not refer Dr. Rodriguez to
3 Mr. Chervin.

4 THE COURT: Who was the physician that you referred to
5 Mr. Chervin?

6 THE DEFENDANT: I thought --

7 MR. DAYAN: You got to talk to the judge.

8 If you don't remember, just say "I don't remember."

9 THE DEFENDANT: I'm not sure. I don't remember who
10 was it.

11 MS. LAI: Your Honor, I think there might be some
12 misunderstanding here. My understanding -- and I don't want to
13 put any words in the defendant's mouth, and he should feel free
14 to correct me if I'm wrong, but my understanding is that he
15 referred patients to doctors.

16 THE DEFENDANT: Yes.

17 MS. LAI: Not that he referred doctors, but he
18 referred -- and that's what he allocuted to in July.

19 THE DEFENDANT: Yes, yes, that's correct.

20 THE COURT: You worked for a clinic?

21 THE DEFENDANT: Yes.

22 THE COURT: And runners brought patients to the
23 clinic?

24 THE DEFENDANT: Sometimes, yes.

25 THE COURT: And was Dr. Rodriguez a doctor at the

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1 clinic?

2 THE DEFENDANT: Yeah, it was his clinic. His clinic
3 it was. And if I got a client --

4 THE COURT: What did you understand the relationship
5 was between Dr. Rodriguez and Dr. Gibbs?

6 THE DEFENDANT: They don't have any relationship.

7 THE COURT: And Mr. Chervin.

8 THE DEFENDANT: They don't have any relationship.

9 Dr. Gibbs send his Dr. Braunstein to the Dr. Rodriguez
10 office.

11 THE COURT: Did you recommend Dr. Braunstein?

12 THE DEFENDANT: Dr. Braunstein come to the Dr.
13 Rodriguez office.

14 THE COURT: Did you recommend Dr. Braunstein to Dr.
15 Chervin -- I mean to Mr. Chervin?

16 THE DEFENDANT: No, no. I know Dr. Braunstein through
17 Aron Chervin, from Aron Chervin.

18 THE COURT: And what role -- what did you understand
19 she did?

20 THE DEFENDANT: She's a doctor. She worked for doctor
21 office for Dr. Gibbs. Dr. Gibbs worked with Aron Chervin.

22 THE COURT: I understand that. What did you
23 understand was wrong about the relationship between Dr. Gibbs
24 and Dr. Braunstein?

25 THE DEFENDANT: Because professional/nonprofessional

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1 can't be work together. And Aron is nonprofessional, and Dr.
2 Gibbs professional. They work as a partner. They can't work
3 as a partner.

4 MR. DAYAN: He said that --

5 THE COURT: I'm sorry. I'm sorry.

6 Did you understand who ran Total Body Diagnostics?

7 THE DEFENDANT: Aron Chervin, yes.

8 THE COURT: You understood that Dr. Gibbs owned Total
9 Diagnostics?

10 MR. DAYAN: Do you understand the question?

11 THE DEFENDANT: No, I don't.

12 THE COURT: You understood that Total Diagnostics was
13 in Dr. Gibbs's name?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Did you understand that Aron Chervin would
16 bill for --

17 THE DEFENDANT: For Dr. Gibbs?

18 THE COURT: For the services of Dr. Braunstein and Dr.
19 Rodriguez?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. I guess that's -- is that
22 sufficient, Ms. Lai?

23 MS. LAI: Maybe just ask him who he understood to be
24 in control -- who controlled Total Body based on what he knew.

25 THE COURT: Who controlled Total Body based on what

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1 you knew at the time?

2 THE DEFENDANT: At the time -- at that time, I knew
3 Aron Chervin controlled Total Body.

4 MS. LAI: Thank you, your Honor.

5 THE COURT: Thank you very much.

6 All right. Let's proceed then.

7 I have before me a presentence report which was
8 prepared on May 8th -- or April 27th, and finalized on May 8th,
9 2012.

10 Have you and Mr. Peysakov read this or has it been
11 read to Mr. Peysakov, and are there any changes to be made in
12 it, Mr. Dayan?

13 MR. DAYAN: If your Honor is talking about the PSR?

14 THE COURT: Yes.

15 MR. DAYAN: Judge, Ms. Lai had pointed out something
16 to my attention today that on Page 23 of the PSR, Paragraph 93,
17 in that paragraph, the defendant makes a declaration to the
18 probation officer that according to the defendant, the
19 defendant's monthly cash flow statement, he earns \$5700 in
20 business income; his spouse earns about 4,000; additionally,
21 the defendant also receives \$1,000 in rental income. As such,
22 the total household income is \$10,695; thus, his monthly cash
23 flow is approximately 3900. It remains unexplained how the
24 defendant meets his monthly expenses, given his reported
25 earnings.

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1 And what the defense has an issue with is the next
2 chart down. It says that adjusted gross income, which is for
3 the year 2010, lines one, two, three, four from the top, it
4 says that 2010, the adjusted gross income that the defendant
5 allegedly had reported was \$15,245.

6 MS. LAI: Negative.

7 MR. DAYAN: I'm sorry?

8 MS. LAI: Negative.

9 THE COURT: Negative.

10 MR. DAYAN: Negative, right. I'm sorry. Negative 15.

11 The defense position that that is some sort of
12 misunderstanding, Judge, because the defendant has a specific
13 recollection of filing income taxes for 2010 that where he
14 showed income of over \$80,000.

15 The probation officer may have been -- may have
16 misunderstood the income taxes, because there was a loss that
17 he had sustained in Florida investment, a home that he
18 purchased in Florida, and maybe that somehow was deducted for
19 future deductions. I don't know how that could have happened.
20 But if that makes any difference for your Honor's position at
21 sentencing, we really take a position that that has to be a
22 mistake, somehow that the probation officer may have misread
23 the income tax papers. Because on the one hand, in Paragraph
24 93, the defendant tells her that his income is over 10,000, and
25 then the adjusted gross --

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1 THE COURT: This has nothing to do with total capital
2 gains; but these are supposedly taken from the federal income
3 tax returns he provided for the years 2009, 2010, and 2011.

4 MR. DAYAN: His wife also makes \$75,000. She works
5 for a very big pharmaceutical company. And that's why we
6 really feel that was a mistake, that 15,000. I'm sorry I
7 didn't notice it earlier, Judge. I don't know how that could
8 appear here. His wife was gainfully employed; she makes over
9 75,000. He makes -- he says he declared a substantial amount
10 in 2010.

11 MS. LAI: Your Honor, the reason I came in a little
12 bit late was because I wanted to verify exactly this point.

13 I spoke with the probation officer. I asked her to
14 look again at the tax returns that the defendant provided. And
15 she reported to me that for adjusted gross income, Line 37 of
16 the tax form, those are the numbers that were on the forms that
17 the defendant gave.

18 So the reason why I pointed this out to Mr. Dayan and
19 now to the Court is because it goes to the character of the
20 defendant; has he been honestly reporting income to the IRS as
21 he's supposed to. And how does he explain away all of this --
22 as the probation officer noted, his expenses far exceed his
23 reported income. And so there's an unexplained component of
24 his income which partly derives from fraud, and partly we can't
25 explain.

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1 MR. DAYAN: Judge, if I may, I think that the
2 probation officer has also overlooked that the defendant and
3 his wife file separate income taxes. She earns over \$75,000,
4 so -- and obviously they are married, as the letters indicate,
5 and they live together. There may be some cross-communication
6 over here, Judge. And if the issue is important for the Court,
7 and I'm sorry that I didn't notice this earlier, and I agree
8 that it goes --

9 THE COURT: This only says that she looked at his;
10 doesn't say she looked at the two of them, two returns. It
11 doesn't say they looked at the joint returns. It says he files
12 separately, I don't know. If he sold the house, that's another
13 matter.

14 MR. DAYAN: No, he didn't sell the house. If you see
15 on the same Page 93 -- I mean 23, the expenses are joint
16 expenses, they live together, and --

17 THE COURT: Well, wait a minute. In 93? 93 does not
18 purport to be the income tax returns.

19 MR. DAYAN: I'm saying page --

20 THE COURT: Doesn't purport to be that, but 94 does.

21 MR. DAYAN: I'm saying Page 23 on top, it shows the
22 expenses, the joint expenses, on Page 23. That's the same
23 page.

24 THE COURT: Right. But those are just household
25 expenses.

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1 MR. DAYAN: Right. And they are shared by the
2 defendant and his wife.

3 And, like I said, she's gainfully employed. She was
4 interviewed -- I believe she was interviewed by the probation
5 department.

6 THE COURT: Yes. I don't quite understand -- I think
7 there's -- what are we going to do? Are we going to send it
8 back to probation so six months later -- what do you want to
9 do? You brought it up. Ms. Lai, I guess you brought it up.

10 MS. LAI: It depends on whether the Court considers it
11 an important factor in sentencing, your Honor.

12 THE COURT: Well, if it's false, of course it's an
13 important factor. I can't tell whether it's false.

14 MS. LAI: I don't know whether the information in the
15 tax return is false, since we are not investigating the
16 defendant for tax evasion. All I'm pointing out at this point
17 is that if he says that the tax returns he provided to
18 probation somehow contained an error, it's something that's
19 worth noting.

20 THE COURT: I don't think he's saying that. He said
21 he filed -- as I read the thing, it says he provided his
22 federal income tax returns, which she says reveal the
23 following. But now his lawyer says that they didn't file joint
24 returns, which is usual, but they filed individual returns
25 separately.

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1 MS. LAI: I understood Mr. Dayan to be telling me
2 earlier that he thinks that these numbers are wrong; that
3 that's not what the defendant reported. So if I'm wrong about
4 that --

5 MR. DAYAN: The defendant's position is that he showed
6 a substantial income, and that if this means that he was at a
7 loss of 15,000, that's just --

8 THE COURT: If his wife made \$75,000, that wouldn't be
9 on the return --

10 MR. DAYAN: No.

11 THE COURT: -- if they didn't file jointly. I'm not
12 sure what you're saying.

13 MR. DAYAN: What I believe may have happened in this
14 case, that he had declared over \$80,000 --

15 THE COURT: But you should have kept copies of
16 whatever he supplied.

17 MR. DAYAN: I looked through my file. I can't find
18 his income tax papers. I always do keep --

19 (Pause)

20 MR. DAYAN: Judge, I can tell you that, and defendant
21 can declare to your Honor he did not misrepresent anything to
22 the income tax -- when he filed income tax papers. Absolutely
23 not. He had a professional accountant. Like I said, he had
24 lost a home. Maybe somehow they had adjusted that, and I think
25 the word is amortization, something like -- and sort of maybe

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1 that's shown on the income tax papers. But he did not
2 misrepresent anything on the income tax papers, Judge.

3 THE COURT: When did he sell the home? Approximately.

4 MR. DAYAN: In 2010. That was the same year that they
5 filed the income tax. And he had a loss of approximately
6 \$100,000, right?

7 THE COURT: You may have a loss.

8 MR. DAYAN: Right. That's what happened, Judge.

9 THE COURT: Did he take it or did his wife take the
10 sale of the home?

11 THE DEFENDANT: I took the loss. I took the loss.

12 THE COURT: All right.

13 MR. DAYAN: Judge, unfortunately, I don't have copies
14 of the income taxes. But, like I said, Judge, the defendant
15 has always been forthcoming with the income tax -- he has an
16 accountant, he --

17 THE COURT: All right.

18 He and his wife though lived together all this time,
19 didn't they?

20 MR. DAYAN: Yes, they do; they are married.

21 THE COURT: Didn't they have two or three children?

22 MR. DAYAN: They have three children now.

23 THE COURT: They had two then. I don't understand.
24 Then the number of exemptions should have been three. I don't
25 understand how that works.

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1 MR. DAYAN: Well, they just -- they had a baby in
2 2012.

3 THE COURT: I understand that. You usually take your
4 own as one exemption, and then whoever is the dependents as the
5 others. Anyway, I don't know how -- I'm not going to take that
6 into account. It's a matter between the defendant and the IRS,
7 and his wife and the IRS, if it is a problem.

8 All right.

9 Any other changes in the presentence report?

10 MR. DAYAN: Judge, if I may, just one more thing.

11 The defendant just refreshed my recollection. After
12 this arrest, he was audited by the IRS. Not pursuant to the
13 government, not pursuant to this case, but just coincidentally
14 he was audited.

15 And when were you audited?

16 It was about January or February 2011. They went
17 through all his papers, the family, and there was -- they
18 didn't even -- he didn't even have to pay -- they just asked
19 that he would have to pay additional for some construction work
20 that he did. But there was nothing improper about his income
21 taxes that was found. And he was audited from A to Z.

22 THE COURT: All right.

23 And he's paid the difference in taxes?

24 MR. DAYAN: Yes. It was a difference between -- he
25 did a construction, and they said you can't deduct for

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1 everything; that's only partial you can deduct.

2 So you paid, right?

3 Yes, he says he paid for everything, Judge.

4 THE COURT: Okay.

5 Any other changes in the presentence report that you
6 want to --

7 MR. DAYAN: Not from the defense.

8 MS. LAI: Not from the government, your Honor.

9 THE COURT: All right.

10 I have before me also a letter from Mr. Dayan dated
11 December 12th, an earlier letter dated July 12th, and I don't
12 believe I have anything from the government on this sentencing,
13 am I correct, Ms. Lai?

14 MS. LAI: That's correct, your Honor.

15 THE COURT: All right.

16 Then I'll hear from you on sentencing, Mr. Dayan.

17 Oh, yes, attached to Mr. Dayan's letter of December
18 12th are the report cards of his children as Exhibit A showing
19 the rank as gifted and talented children, both Linda and --
20 Linda, anyway. And the other is for Lauren.

21 Then there's a letter from Mr. Peysakov, which is
22 undated but -- and then also there's a letter from Anastasiya
23 Peysakhova, who's the defendant's wife; and a letter from Anna
24 Peysakhova, who is the defendant's mother; and a letter from
25 Pavel Vishnevetskly -- I guess I'm pronouncing that right --

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1 the person from the New York Association of Holocaust
2 Survivors; and a letter from New York Association of Holocaust
3 Survivors, Pavel Vishnevetskly, which is the second letter, I
4 guess. And then there's two honor role awards for Linda
5 Peysakov; and for Lauren Peysakov, Certificate of Excellence.

6 And I've looked at those documents.

7 Should I have anything else before me?

8 MR. DAYAN: Not from the defense, Judge. You have
9 some -- I received some drawings from his daughters, but I
10 think I included them as exhibits. The family wanted me to
11 submit them.

12 THE COURT: All right.

13 You can hand them up, if you want.

14 Award for Lauren. I think I've seen the Certificate
15 of Excellence for Lauren, and the honor role awarded to Linda.
16 The Student of the Month for Lauren, and a drawing of flowers
17 by Lauren, and a drawing of a house and trees -- excuse me, a
18 house and dog by Lauren. And a picture of trees, I guess, by
19 Lauren. Trees and flowers.

20 All right.

21 I'll hear from you on sentence, Mr. Dayan.

22 MR. DAYAN: Thank you, Judge.

23 On behalf of Mr. Peysakov, Judge, I had attempted to
24 articulate a position where a man who was basically raised in
25 the former Soviet Union, and went through military service

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1 there, and really went through a very complex type of a
2 youthful upbringing. And I had attempted to reconcile that
3 with the way that type of a young man finds himself in the
4 United States.

5 And what I have attempted to explain was that when you
6 grow up in a country that where the government -- whatever the
7 government tells you is not always the best thing; in other
8 words, when you grow up in a tyrannical country like the Soviet
9 Union, a lot of people there, they disagree with the
10 government's statutes, they disagree with the government's
11 positions. And because many of the rules and regulations of
12 that government are not really right, they are not really the
13 best thing for the people; they are more for the government
14 itself, a tyrannical government.

15 So I believe what happened with someone like
16 Mr. Peysakov, they come to this country with this state of mind
17 that you don't always have to listen to what the government
18 says, because whatever the government says may not always be
19 the right thing. And it takes time. It's a gradual process.

20 See, for someone who comes here to this country when
21 they are very young, it's different. Like myself, I came here
22 when I was ten. He came here, he was already -- he was already
23 established; he was already -- his mental state, he was already
24 a developed young man. I'm not making an excuse for what he
25 did, Judge. I'm just saying that he is otherwise a good and a

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1 decent man. He's otherwise a hardworking man, as I had tried
2 to explain in my papers, Judge.

3 When I say that he is the source of an American family
4 in the making, what I meant by that was the classic American
5 family, where the father provides for his children, educates
6 them in school, in religion, in home, he is the source of all
7 that. He is the one who provides for them. And that shows
8 that he is a man of great character; a man who devotes and
9 sacrifices his life for the welfare of his children and his
10 family. And that's why I tried to reconcile, Judge, with the
11 man who actually came here from the Soviet Union.

12 And I don't want to be redundant about everything I
13 had written, Judge. All I'm asking is that your Honor please
14 do not incarcerate him, because it would really be a traumatic
15 shock for this family.

16 He has two young daughters who are of tender years,
17 and he really spends a lot of time with them. He really spends
18 a lot of time with them. I think that if he's incarcerated at
19 a place like MDC or MCC, the daughters -- the mother may
20 decide -- the parents may decide not even to take the daughters
21 to that type of an environment. And I understand, Judge, that
22 the common response is, Well, he should have thought of that
23 before he engaged in this type of activity.

24 I don't believe that Mr. Peysakov appreciated,
25 appreciated, that one day he would be here in federal court;

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1 that there would even be a risk of him being in this type of a
2 position where he would have to really beg for not to be
3 incarcerated.

4 I appreciate the disposition we had worked out with
5 the government. He had pled guilty, Judge. He's willing to
6 take -- he's actually already working on getting the \$75,000,
7 which is the amount of the loss in this plea agreement. He
8 wants to pay that back right away; he doesn't want to stall and
9 pay bimonthly payments. He really wants to do the right thing,
10 Judge, and move on. He learned a great lesson, your Honor. It
11 is a great lesson not only for Mr. Peysakov, but for all his
12 generations. He will teach his children, he will teach his
13 grandchildren that in this country, the United States, you live
14 a law-abiding life, you pay your taxes on time, you do nothing
15 that's even gray. Because when you come home at night, after a
16 hard day's worth of work, and you know you did everything
17 properly, you didn't violate any laws, you'll be happy. And
18 that's what's worth it. It's not worth to extend yourself and
19 expose yourself to any criminal prosecution.

20 I ask your Honor most sincerely, really this is -- he
21 is an unusually good man. And I'll tell you why, Judge. In
22 the last week, it was a very big holiday for Jewish people; it
23 was a holiday of Hanukkah; it was miracle of lights. And I
24 wasn't really -- he asked me not to really talk about this, but
25 I really feel as his lawyer I should.

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1 He and his brother, who's sitting in the courtroom
2 today, actually right there, they actually -- they made a very,
3 very generous donation to a very small local synagogue on Ocean
4 Avenue, where a lot of immigrant Russian people go attend. And
5 they donated a Torah, which is a very large -- I don't know, I
6 think it's called a scroll. It's not inexpensive. And they
7 donated it. They paid for a beautiful Hanukkah party.

8 And I walked in, because they asked me to come, and I
9 couldn't say no. And I walked in, and I saw all these
10 immigrant children playing and having a good time, and food.

11 I think that Mr. Peysakov will never, never commit any
12 crime. I think that the lesson is tremendous, Judge. It's a
13 tremendous wake-up call for this young man, who's otherwise a
14 good American, Judge. Works hard, pays his taxes. He's good
15 to his mom, Judge. That says a lot about a person. As you
16 see, the letters from the Holocaust organization, he helps,
17 Judge. He is not just a man who basically lives for himself.
18 He gives himself to his family, to people who need him.

19 I ask your Honor not to incarcerate this man
20 because -- and I understand that the sentencing guidelines,
21 they are not so shocking in this case. But because of the
22 perhaps irreparable harm that this may cause to his children,
23 who are honor students, Judge -- both of them are honor
24 students, he studies with them, he does everything with them,
25 Judge -- I ask your Honor not to sentence him to a custodial

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1 period of time. In fact, I wanted to go out and ask your Honor
2 for the following, that -- I've learned -- and I told this to
3 Ms. Lai, and she told me that she would object, but I've
4 learned this week that it cost the United States government
5 approximately \$5,000 a year to keep a defendant on supervised
6 release.

7 If your Honor feels that this defendant is not -- does
8 not need supervision, your Honor is actually free to sentence
9 him to time served, the time that he's spending in jail from
10 arrest to arraignment or conditional discharge. I'm just
11 making these suggestions to you, because there's no need to --
12 this case has been pending for about two years. That's like
13 supervised release. He's been complying. He's always
14 attended. Never uses drugs. Does not drink, except socially.

15 For all those reasons, Judge, I'm asking you to
16 consider not sentencing him to incarceration.

17 THE COURT: In the presentence report, Paragraph 38,
18 it says that -- it first mentions Judson Dario Just, and it
19 mentions Mr. Peysakov, and others not named herein, managed
20 these medical crimes, that's talking about his clinic, which he
21 allegedly managed, to maximize the inflated medical billings
22 that were submitted to insurance companies.

23 Now, the charge there is that he knew that the
24 billings of his own medical clinic were inflated, billings to
25 insurance companies. I don't know whether you focused on that

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1 or not.

2 MR. DAYAN: I did discuss this with Mr. Peysakov. And
3 he is not an owner, Judge, of any clinic.

4 THE COURT: It didn't say he was an owner; it said he
5 managed the clinic. Did he manage the clinic or was he a
6 worker?

7 MR. DAYAN: I just want to get the name of the clinic.

8 (Pause)

9 MR. DAYAN: DXR is the clinic where Mr. Natan Peysakov
10 worked. He had worked there for the clinic, assisting the
11 clinic in obtaining the business, because Mr. Peysakov spoke
12 Russian.

13 THE COURT: I understand.

14 MR. DAYAN: Right. He spoke Russian. And so
15 basically he had assisted, that is true, Judge. That is true.
16 But he never got involved, as I had written in my letter --

17 THE COURT: Wait a minute.

18 So you're saying he was an assistant manager, or what
19 have you, who received patients through the runners, right?

20 MR. DAYAN: Correct, Judge. Correct.

21 THE COURT: Now, did he then, on behalf of those
22 persons whom he brought in, arrange for inflated medical
23 billings by his clinic?

24 MR. DAYAN: That is absolutely not accurate. And I
25 want to explain how, Judge. He never got involved with the

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1 treatment. He never got involved with the doctor's treatment.
2 He never got involved with that. And that's why I try to
3 separate him in my papers, differentiate between someone like
4 him and others who basically were partners with the doctor, who
5 pressured doctors to inflate.

6 THE COURT: I understand.

7 MR. DAYAN: His income wasn't even that great from
8 that clinic. I believe he earned about \$1,000 every two weeks,
9 I believe.

10 THE COURT: He was on salary?

11 MR. DAYAN: He was on salary. He wasn't even --

12 THE COURT: Did he inflate the bills for the clinic so
13 that they could overbill the insurance companies?

14 MR. DAYAN: Absolutely not, Judge.

15 THE COURT: Did he have knowledge that that was going
16 on?

17 MR. DAYAN: Absolutely not, Judge. He did not have
18 knowledge that it was inflated, because he never got involved
19 with the medical treatment. His job was to assist the clinic
20 in getting the patients.

21 And I understand that the government may say, Well, of
22 course he knew. But that was never part of -- they never
23 alleged it.

24 THE COURT: There are two different situations here.
25 There are those billings for his clinic, the one he worked for;

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1 and then there are the billings for Total Body Diagnostics that
2 were performed by his clinic, but were billed by Total
3 Diagnostics, as I understand it, and then Dr. Gibbs and
4 Mr. Chervin. So there are two different sets of inflated bills
5 here that are potentially inflated bills. So I'm trying to
6 isolate on these two.

7 MR. DAYAN: If I may.

8 THE COURT: Yes.

9 MR. DAYAN: I believe the facts are that DXR would
10 have a physician that would make like a house call to Total
11 Body Diagnostics, or the other way around. I think that's what
12 happened here. And maybe in the scheme of things, the industry
13 itself, people can -- I can't say that -- I don't know what was
14 inside his mind, did he suspect. I don't know whether the
15 government's theory would have been at trial on the conscious
16 avoidance. But I can tell your Honor that the defendant -- and
17 I could say this unequivocally -- that the defendant never got
18 involved with the medical treatment at all of any of the
19 physicians. That was not -- he wasn't making -- he wasn't --
20 unlike Aron Chervin, he was not a partner; he was not making
21 percentages of anything. He had no incentive to get involved
22 with medical billing.

23 THE COURT: Did he get paid by Aron Chervin for the
24 number of persons he referred to Total Body Diagnostics?

25 MR. DAYAN: Yes.

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1 THE COURT: So he got a kickback, in other words, for
2 sending the people.

3 MR. DAYAN: Yes.

4 THE COURT: How much money did he make?

5 MR. DAYAN: Anywhere between 20 and 30,000 that he
6 made directly from Aron Chervin. He's saying he's giving the
7 highest number possible.

8 THE COURT: I'd ask the government, do they agree with
9 what Mr. Dayan says, that that was the way in which he got
10 paid, or do you find that he had knowledge of the other
11 clinic's billing practices?

12 MS. LAI: We have no evidence to contradict that
13 that's the amount that ended up in his own pocket.

14 But as to whether he understood that Total Body
15 Diagnostics was billing unnecessarily, he had to have known.
16 Why would you refer patients to a clinic that is controlled by
17 a nonhealthcare professional if you believe that the clinic was
18 operating entirely aboveboard. That just makes no sense. And
19 you're getting a kickback for those referrals. That makes no
20 sense, your Honor.

21 MR. DAYAN: Judge, it may make no sense to us, because
22 we've seen so many of these cases. But there are people who --
23 there are people out there who try to establish a fraudulent
24 clinic, but the fraud sort of like stops at the illegal
25 association. In other words, they attempt to legitimize it

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1 by -- I understand that the clinic, the structure itself is
2 fraudulent, because you have a nonprofessional partner with a
3 professional. But they try to legitimize it by sort of saying,
4 Well, we don't provide non -- we don't provide nonnecessary
5 type of treatment. And that's not unusual. I mean the clinic
6 itself is still fraudulent, but there are individuals who
7 attempt to somehow legitimize that.

8 THE COURT: Even in his own clinic, the runners --
9 they paid the runners, didn't they, for bringing in clients.

10 MR. DAYAN: That is true, Judge. But it doesn't mean
11 that he ever believed that these runners provided patients who
12 were not in need of actual service or --

13 THE COURT: I follow you.

14 But that, of course, I would think would be illegal
15 anyway.

16 MR. DAYAN: Absolutely. No, absolutely, Judge.

17 THE COURT: He joined a company that was engaged in
18 illegal activities.

19 MR. DAYAN: Absolutely, Judge.

20 And I understand that legally he may be responsible
21 for --

22 THE COURT: I'm just trying to assess it in terms of
23 his culpability, and also in light of your argument that this
24 type of conduct probably -- in view of what I read in the paper
25 about the extent of corruption in Russia, this would not be a

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1 great shock to him, whereas it might be to someone who was
2 brought up in this country.

3 MR. DAYAN: And I think -- I just want to go on,
4 Judge.

5 It is a tremendous shock being here. There's no
6 question about it. Doesn't matter whether he's Russian or not,
7 that's a shock. But I want to just go on just one more fact.

8 I'm not trying to -- I'm not trying to justify that
9 these associations between professionals and nonprofessionals,
10 I'm just saying that in their own mind, they begin to
11 rationalize that, yes, it's fraudulent, our association or
12 creation of this clinic. But since we don't provide
13 unnecessary treatment, and since all our patients really need
14 assistance, what are we doing that's so wrong. Unfortunately,
15 that's how they -- unfortunately, and I repeat that word again,
16 that's how they think. And obviously it's going to stop,
17 because I think that there's just more and more of these cases,
18 and it's a prevailing issue in the Russian-speaking community.

19 And I ask your Honor, that even for general
20 deterrence, this is a unique case, because really he's a great
21 dad. He's just a good father, Judge. And he devotes so much
22 time to his children. It just would be a shock to the whole
23 family.

24 For all those reasons...

25 THE COURT: All right.

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1 Ms. Lai, would you like to respond?

2 MS. LAI: Just very briefly, your Honor.

3 The government seeks a guideline sentence in this
4 case.

5 The defendant's first argument was that -- it's
6 basically a cultural argument. But the fact is he was born in
7 1971. He arrived in the U.S. in 1997 at the age of 26. When
8 the offense was committed in 2010, he had been here for 13
9 years, so that is --

10 THE COURT: Did he speak English when he came?

11 MS. LAI: I don't know, your Honor. I don't know when
12 he came whether he spoke English. I think Russian is certainly
13 his first language; he's much better at it.

14 So he spent most of his adult life in the U.S. He
15 sought the benefits of U.S. citizenship, so he can hardly now
16 blame his cultural heritage, after having deliberately come to
17 this country and sought all the benefits of U.S. citizenship.

18 THE COURT: When did he become a citizen?

19 MS. LAI: That was in 1997. Actually, I'm not sure.
20 Maybe 2003. He may have become a citizen through marriage, but
21 I'm not 100 percent sure about that, your Honor.

22 And regardless of whether or not he personally did the
23 billing, or whether he personally provided medical care to the
24 patients, the reality is that in this business what he's doing
25 is he's offering injured human beings as a profit center to

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1 these clinics that he knew to have been run illegally. And the
2 Court saw a couple of those witnesses testify. I mean they had
3 serious car injuries; they went in looking for help. And they
4 get referred through the likes of Mr. Peysakov to clinics that
5 are not doing them any good, and in some cases positively
6 harming them as a result. Now, he may not have known all this
7 individual-by-individual, but he certainly knew all the
8 possibility as he was doing it.

9 And while I don't doubt that he's a good family man
10 and he's good to his children --

11 THE COURT: I don't see why he had knowledge that they
12 were going to perform unnecessary tests, things of that sort,
13 so they could bill for them.

14 MS. LAI: Because to be paid 20 to \$30,000 in
15 kickbacks, I mean there's got to be a way that the clinic can
16 make up that money that they are paying out in kickbacks.

17 THE COURT: That doesn't seem to necessarily follow.

18 I do follow your point that the kickbacks are illegal
19 per se, and it's commercial bribery. I do pick up that. But I
20 don't see that it would mean that he would necessarily know
21 that they were going to overbill for their business. They
22 might absorb it as part of their overhead, what have you, I
23 don't know. I don't know how much he was paid per person. If
24 it's an outrageous percentage, then, of course, you're right.

25 MS. LAI: Unfortunately --

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1 THE COURT: Head count could be easily taken care of
2 maybe.

3 MS. LAI: I agree, your Honor.

4 But regardless of how you -- if the head count -- if
5 the amount per patient that he was paid was low, that means he
6 referred a lot of patients. And if the head count -- the
7 amount per patient he was paid was high, then he's got to
8 question how they can possibly pay me that much money per
9 patient. So either way you cut it, it doesn't weigh in his
10 favor, I think.

11 Obviously the Court has complete discretion to draw
12 whatever inferences it wishes, but I think from the
13 government's view, given the way he understood the business to
14 operate, given the fact that his own clinic was paying runners,
15 he had to have known that there was some amount of overbilling
16 happening. Maybe he didn't know the full extent, but he had to
17 have known that some of it was happening.

18 THE COURT: When you say "his own," it was not owned
19 by him.

20 MS. LAI: No, no, I understand. But he was the
21 manager.

22 THE COURT: He was a manager, I gather.

23 MS. LAI: A manager. Okay.

24 THE COURT: Not one of many, but at the same time, as
25 I understand it; is that right?

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1 MS. LAI: I think he was the manager.

2 THE COURT: Single employee manager? The only one?

3 MS. LAI: I think he was the manager, your Honor.

4 Apparently the agent has interviewed the doctor, and
5 the doctor only referred to one manager.

6 THE COURT: The doctor being?

7 MS. LAI: Dr. Rodriguez, your Honor.

8 THE COURT: I see.

9 Is he the head doctor?

10 MS. LAI: Yeah, he was the owner on record of the
11 clinic.

12 THE COURT: All right.

13 MS. LAI: And, in addition, I was saying that I'm sure
14 that the defendant himself -- I don't doubt that he's a good
15 family man, a good father, that he provides for his family. I
16 don't know what the likelihood of recidivism is; I can't read
17 his heart. But at least for general deterrence purposes, your
18 Honor, we cannot have a case where a clinic manager is
19 referring patients in this manner, and the consequences are
20 simple probation for general deterrence purposes at the very
21 least, your Honor. And in light of the real human beings who
22 were affected by the crime, as well as the losses to the
23 insurance companies, the government asks for a guideline
24 sentence.

25 MR. DAYAN: Judge, as a response to your question

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1 whether he was the manager or a manager, the government said
2 they think that he was the manager. And the reason that they
3 don't know for sure is because when the agent, the case
4 agent -- and I don't believe it was this agent; I think it was
5 another agent -- who had visited the doctor, the doctor had
6 told him that the manager was a person by the name of Mike
7 Gordon.

8 It wasn't Peysakov who was the manager, because
9 Peysakov had a base salary that did not increase or decrease
10 with the volume of patients. That's why they don't -- I mean I
11 know because I had spoken to the defendant, and he had told me
12 that Mike Gordon was the manager of that clinic. The
13 defendant's salary never fluctuated. That's unlike any other
14 manager, the manager, because they always like walk away with
15 like 80 or 70 percent. Not this case, Judge. Not this case.

16 THE COURT: Any response? I can see the agent talking
17 to you.

18 MS. LAI: Your Honor, the agent says that she was
19 present at an interview with Dr. Rodriguez. And Dr. Rodriguez
20 spoke specifically about Natan Peysakov. So he may have
21 mentioned another manager, but when he was interviewed, he was
22 interviewed about Mr. Peysakov.

23 THE COURT: That would be the focus of the agent under
24 these circumstances, because he was the named defendant in the
25 case, and that was because of his relationship with the

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1 relationship with Chervin.

2 MS. LAI: Yes, yes, your Honor.

3 THE COURT: All right.

4 Mr. Peysakov, would you like to say something on your
5 own behalf at this time?

6 THE DEFENDANT: What was done was completely wrong,
7 and I understand that.

8 MR. DAYAN: Slow.

9 THE DEFENDANT: I understand what I'd done was
10 completely wrong and it's illegal. And I learned from this
11 lesson. I understand to do -- to live in this country is not
12 the right way to do what I did. And but I promise I'm not
13 going to do anything illegal for the future, this is for sure.
14 And I fully accept what I've done.

15 THE COURT: You think you learned from this?

16 THE DEFENDANT: I learn a lot from this. And I feel
17 like for the future life, I will never done this in any
18 circumstances.

19 THE COURT: Isn't there a broader lesson than that
20 about business and manner of doing business? You do business
21 with construction, you do business in -- you must be getting
22 contracts.

23 I had a client once. I had a client once in a
24 criminal case, stockbroker case involving a company called
25 Hercules Galleon, which is three or four defendants.

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1 And in the course of my representation of this man,
2 he'd never been a stockbroker before. What he really was was a
3 manager of the family business. And what he asked me was was
4 there anything wrong with paying people to get contracts. And
5 that was his question. And I couldn't believe it. He was
6 saying, you know, is it all right to bribe.

7 And he was a native American from Chicago. And he was
8 involved in a criminal case where people were -- he and his
9 brother-in-law and another man were operating this stock fraud.
10 And the idea was to pump the stock up, get brokers to buy the
11 stock, and then after you got to a certain price, you sell it
12 and you make a big profit. So he was being charged for that.

13 And he actually was very smart about the nature of the
14 fraud, because while they were bidding the stock up, he was
15 selling his stock, even though he was a partner of his
16 brother-in-law and the other man. And so he was participating,
17 but he was, in effect, sabotaging the scheme, because it didn't
18 allow the stock to go up as high as they had planned or the
19 leaders had planned, two others.

20 But here he was asking me whether it was all right to
21 engage in commercial bribery. And I realized that his morals
22 were not the kind of morals that we look to in this country. I
23 don't know if that's come across to you or not, because you're
24 engaged in business, your brother is engaged in business, and
25 I'm sure there's a lot of corruption in certain businesses.

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1 And I would think particularly in real estate. And maybe
2 corruption is so broad that you feel you've got to engage in it
3 or you won't get the business.

4 But that is a crime, commercial bribery.

5 So how do you feel about that?

6 THE DEFENDANT: I feel better to lose the business
7 than to work in business like this.

8 THE COURT: You knew this?

9 THE DEFENDANT: No.

10 THE COURT: You knew that before.

11 THE DEFENDANT: It's not exactly, but we have to take
12 money from -- but, yeah, I did it before, but I don't want to
13 do it anymore.

14 THE COURT: In his case it was a little different,
15 because there he probably solicited -- he probably solicited
16 you to do it, with the promise of payment. But now put it on
17 the other way. You're going out to get business. Are you
18 going to be an Aron Chervin or are you going to be your own
19 man?

20 THE DEFENDANT: I want to be myself. All myself.

21 THE COURT: Well, are you done? I didn't want to
22 interrupt you.

23 THE DEFENDANT: From this case, from last two years,
24 and my I would say terrible lie, I don't want to do anything
25 with no kickbacks, no briberies. Work hard, and this is a nice

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1 way, legal way. Respect law.

2 MR. DAYAN: He's not very eloquent, Judge.

3 THE COURT: He's pretty eloquent. You should let him
4 talk by himself.

5 THE DEFENDANT: Give me a chance, and I will never
6 disappoint you.

7 THE COURT: All right.

8 THE DEFENDANT: I'm sorry what happened.

9 THE COURT: Thank you very much, if you're done.

10 You're done?

11 THE DEFENDANT: Thank you.

12 THE COURT: While I think about the sentence, I'm
13 going to go through the guideline calculations, which is
14 necessary as a matter of sentencing.

15 This is a violation of -- conspiracy to violate the
16 health fraud and mail fraud laws of the United States, in
17 violation of 18 United States Code, Section 1349. And the
18 appropriate guideline is found in Guideline 2X1.1, which refers
19 to attempted solicitation and conspiracy. And that just refers
20 you over to Guideline 2B1.1, because those cover the specific
21 statute 18 United States Code, Section 1341, 1347, which apply
22 to the conspiracy charges in question.

23 And there, the base offense level under Subsection
24 (a)(1) of 2B1.1 is seven. Because the loss was more than
25 \$70,000 to the insurance companies, but less than 120,000, the

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1 offense level is increased by eight levels, and the adjusted
2 offense level is therefore 15, in which two points are deducted
3 because the defendant showed recognition of his responsibility
4 for the offense pursuant to Guideline 2B1.1(a). That leaves an
5 adjusted offense level of 13, and a total offense level of 13.

6 Defendant has no prior conviction, either adult or
7 juvenile arrests, for that matter. And he falls, therefore,
8 into Criminal History Category I, total offense level of 13.
9 The guidelines call for a sentence of 12 to 18 months. 12 to
10 18 months. And the probation office recommends a sentence of
11 six months imprisonment, to be followed by three years of
12 supervised release, with six months served in home detention.
13 I think that's a split sentence under the guidelines.

14 There is no fine recommended. However, there is --
15 you are requesting restitution and forfeiture, Ms. Lai?

16 MS. LAI: Yes. There was already a consent order of
17 forfeiture that the Court signed at the plea, your Honor.

18 THE COURT: All right.

19 And what about restitution?

20 MS. LAI: The forfeiture would be applied towards
21 restitution, it's the government's intent.

22 THE COURT: Forfeiture would be applied towards
23 restitution.

24 And then there's a special mandatory assessment of
25 \$100.

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1 Turning now to the provisions of 18 U.S.C., Section
2 3553(a), the Court is required to arrive at a sentence which is
3 sufficient, but not greater than necessary, to meet the
4 sentencing factors mentioned in 3553(a), Subsection (2).
5 3553(a) requires a court to consider in sentencing not only the
6 nature and circumstances of the offense, and the history and
7 characteristics of the defendant, but also under Subsection (2)
8 the -- or Paragraph 2, I should say, the need for the sentence
9 imposed to reflect the seriousness of the offense, promote
10 respect for the law, and provide just punishment for the
11 offense. Second, to afford adequate deterrence to criminal
12 conduct. That refers to deter other people from committing the
13 same crime. And C, to protect the public from further crimes
14 of the defendant. And D, to provide that defendant with needed
15 educational or vocational training, medical care, or other
16 correctional treatment in the most effective manner.

17 Difficulty here is that there has to be a deterrent
18 factor to this type of crime. And I accept that what I've
19 learned about the defendant here at the sentencing hearing and
20 otherwise from reading the reports and all, that he's unlikely
21 to commit a further crime. Also, that Mr. Dayan's point that
22 this man was essentially raised in Russia until the age of 27,
23 and exposed to an attitude -- maybe I should say what many
24 people over there have with getting away with whatever you can.
25 It's a problem, and an adjustment to the laws of this country

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1 is difficult for many of them. The difficulty really is is how
2 do you provide adequate deterrence for other people. My
3 difficulty is in this case that there are a lot of Russian
4 immigrants in the case who need -- Mr. Chervin, Mr. Terdjanian,
5 Mr. Dobrer haven't been sentenced. Mr. Chervin hasn't been
6 sentenced. A number of the others. But there are a number
7 that have been sentenced who have even lesser participation in
8 the crimes charged, and for some reason they come up first.

9 On the other hand, I've long taken the position that
10 first offenders -- with first offenders, the judge -- and long
11 before 3553(a) took its place in the Court's consideration at
12 the time of sentence, I took exception to the guidelines
13 provision. There was no discretion for judges for first
14 offenses on the theory that first offense was a chance for a
15 person to turn themselves around if the judge felt that they
16 were likely that they could.

17 Here, I think the defendant could turn himself around.

18 On the other hand, I have this problem of deterring
19 others, particularly others in the immigrant community coming
20 from behind the Iron Curtain, as it was called.

21 Taking into account the provisions of 3553(a), I'm
22 going to sentence the defendant to -- let me see. I'm going to
23 sentence him to a period of five years probation, with six
24 months of home confinement, not to interfere with his job, but
25 to require him to be home in the evenings and at times when

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1 he's not on the job. And after that period of six months, to
2 perform 100 hours of community service with an agency approved
3 by the probation office. And there will be a forfeiture order
4 which has been signed. A special assessment of \$100 will be
5 due in a week -- or this week.

6 The mandatory provisions of supervised release -- or,
7 rather, probation will apply. That is, that the defendant
8 shall not commit another federal, state, or local crime;
9 defendant shall not illegally possess a controlled substance;
10 defendant shall not possess a firearm or destructive device.

11 Mandatory drug testing is suspended based on the
12 Court's determination that the defendant poses a low risk of
13 future substance abuse. And defendant shall cooperate in the
14 collection of DNA as directed by the probation officer.

15 Standard conditions of probation 1 through 13 will
16 also apply with the following special conditions:

17 Defendant shall provide the probation officer with
18 access to any requested financial information; defendant shall
19 not incur new credit charges or open additional lines of credit
20 without the approval of the probation officer, unless the
21 defendant is in compliance with any installment payment
22 schedule which the defendant may be subject to as a result of
23 the terms of this sentence; defendant shall comply with the
24 conditions of home confinement.

25 And during this time, you will remain in your place of

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1 residence, except for employment and other activities that
2 would be religious or medical activities approved by your
3 probation officer. And you will maintain a telephone at your
4 place of residence without call forwarding, a modem, caller ID,
5 call waiting, or portable cordless telephones during the above
6 period.

7 At the direction of your probation officer -- I'm not
8 going to require that.

9 Home confinement shall commence on the date to be
10 determined by the probation officer. And defendant shall pay
11 the costs of home confinement on a self-payment or copayment
12 basis as directed by the probation officer.

13 Defendant is to report to the nearest probation
14 officer within 72 hours, and be supervised in the district of
15 his residence.

16 The defendant shall pay to the United States a special
17 assessment of \$100 due this week.

18 Now, has the defendant arrived at a date in which he
19 would pay the amount of the forfeiture order that the Court
20 ordered?

21 MS. LAI: I don't think a date has been set yet, your
22 Honor.

23 THE COURT: He said he might.

24 MR. DAYAN: I think that, Judge, just to play it safe,
25 within 30 days from today.

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1 THE COURT: You will pay it within 30 days from today?

2 MR. DAYAN: Yes, he would be able to pay the full
3 amount.

4 THE COURT: You have the funds in hand?

5 MR. DAYAN: I don't have it at hand, but he's in the
6 process of putting it together. 30 days is more than
7 sufficient time.

8 THE COURT: Then he has it arranged so that he'll have
9 it in the 30 days?

10 MR. DAYAN: Yes.

11 THE COURT: In which case I won't impose a payment
12 schedule. So the forfeiture amount will be paid in 30 days.
13 Then I don't have to set any kind of percentage of take-home
14 pay to be paid on --

15 MR. DAYAN: Yes. He'll be paid within 30 days, Judge.

16 THE COURT: All right.

17 Now, I think there's no fine, and there's no
18 restitution, in view of the forfeiture order. No restitution
19 request.

20 You have ten days to file a notice of appeal of your
21 conviction here or your sentence, Mr. Peysakov. All you have
22 to do is write a letter to the Court, United States Court,
23 Southern District of New York, 500 Pearl Street, New York, New
24 York, and say in the letter, "I appeal." That will preserve
25 your right to appeal anything in connection with your

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1 conviction or your sentence here. But if you don't send it in
2 within that ten-day period, the Court of Appeals won't hear
3 your appeal; they'll say you waived your right to appeal. So
4 if you're going to appeal anything about this, send that letter
5 in within that ten-day period.

6 Now, let me tell you why I arrived at this sentence,
7 because it's a break for you. And I decided that if I would
8 have -- if this were a case involving nonimmigrants, people who
9 were raised in this country, and I was of the opinion that they
10 wouldn't commit other crimes, I would have given you at least
11 this break, maybe even with lesser condition of home
12 confinement.

13 But in this case, it's important that the people in
14 the community who knew of this crime be deterred from
15 committing other crimes. The difficulty is that you come up in
16 an early time, and Mr. Aron Chervin hasn't been sentenced, and
17 Mr. Dobrer hasn't been sentenced. And the other people who
18 were much more involved in the case haven't been sentenced.
19 And I felt that their sentences should be severe enough so that
20 other people would be deterred. And I had enough room with
21 respect to the remaining defendants to send the message that
22 this type of crime should be deterred and shouldn't be engaged
23 in by anyone. So that was my thinking.

24 Mr. Terdjanian hasn't been sentenced, and Mr. Kuflik
25 hasn't been sentenced, and Vadim Chervin hasn't been sentenced.

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1 So I have more room.

2 Let me say one thing on the taxes.

3 Whoever you get on taxes, don't go for one of these
4 people who will say how much they'll save you on your taxes,
5 because they have a motive to cheat on your taxes. They think
6 they'll get a higher fee from you because they've minimized
7 your taxes in some way. You want to get someone who plays
8 straight with you and plays straight with the government to do
9 your taxes. Because you don't want that kind of trouble. And
10 it costs more. You have to go through -- you have to pay them
11 through the audit. They get paid on the audit. You have to
12 pay more then. So it doesn't pay.

13 And I know it's more complex in your case if you're
14 engaged in construction and all those things. And the kind of
15 returns I've had to file, until a couple of years ago I always
16 made out my own. But then it got too complex, because I
17 couldn't figure out the alternative tax computations. And when
18 I called the government to ask them about it, they didn't know
19 either; there was only one man in the office that knew, and he
20 was on leave. So they had to wait till he came back to advise
21 me on the alternative tax. And even then I didn't understand
22 it. So I had to hire an accountant, go to Block, H&R Block,
23 and get my taxes done.

24 So, anyway, that's a piece of advice.

25 It seemed to me the other difficulty here was I could

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1 see the probation office really recommended the minimum
2 sentence for you under the guidelines, which was a split
3 sentence. And that meant they did, so it seemed to me, in
4 part, thinking about your children and your wife, being able to
5 take care of the children during your incarceration. And that
6 means it is no longer the case, because six months have passed
7 since then, and your children are probably old enough for you
8 to take care of them now. And she probably has to go to work
9 after six months. That's the usual time for a woman to go back
10 to work and earn the money.

11 So that the probation department, in a sense, was a
12 little bit out of kilter because of the length of time that has
13 gone by, six months later than the time they wrote that report.
14 So that's the reasons that I arrived. And I'd probably follow
15 the probation department's recommendation if you'd been
16 sentenced six months earlier.

17 Now, look for future life. You've got a family to
18 bring up. One of the things you've got to learn here is how
19 important family is. Because think of what you did in terms of
20 throwing your family into a possible situation where you're not
21 there. And you went there to support your family. It doesn't
22 pay to take chances. Doesn't pay. It's too important. Your
23 family is too important. It's too important to your wife to
24 not have that strain. It's too important for the children not
25 to have that strain.

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1 One thing you find sitting on the bench, anyway, and I
2 think most defendants find is how important it is, the family
3 is, and family support is, and how important their children are
4 to them and their wife is to them.

5 So I wish you luck. I wish your family luck. And
6 since you're Jewish, I can't wish you a happy new year and
7 merry Christmas, but I'll wish you happy holidays and good luck
8 for the rest of your life.

9 MR. DAYAN: Thank you, Judge.

10 It's an advantage actually to be Jewish this time of
11 year, because we celebrate all the holidays.

12 THE COURT: I know. You get presents for ten days,
13 don't you?

14 MR. DAYAN: Yeah, but this is such a merry time of
15 year for everyone. It doesn't matter. It's just -- just a
16 beautiful time. Like my son goes to Jewish school, but he
17 sings Christmas songs. It's just beautiful songs. Any
18 religion, it's just beautiful.

19 THE COURT: That's true.

20 On the other hand, I had to go to Grand Central last
21 Saturday, because I had -- my daughter is adopting a child --
22 one of my daughters is adopting a child from China. And she
23 just got the notice that she's qualified, and her husband's
24 qualified. And I had to go up to the country to pick up the
25 notice to send it to her because she lives in Hong Kong.

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1 And -- at this point.

2 So I go into Grand Central, and there are more people
3 in Santa Claus clothes than I've ever seen in my life. There
4 were more of them than there were out of Santa Claus clothes.
5 And I was supposed to meet someone afterwards. So I said,
6 You'll be able to tell me because I'm not wearing Santa Claus
7 clothes.

8 MR. DAYAN: Thank you, Judge.

9 Merry Christmas, Judge. Happy new year. All the
10 best. A lot of help to this Court, Judge. Stay healthy and
11 stay with us for another 20 years.

12 THE COURT: Thank you very much.

13 MR. DAYAN: At least.

14 Thank you.

15 THE COURT: Good luck to you.

16 * * *